

FCC DOCKET SUMMARIES

The following is a list of significant Federal Communications Commission ("FCC" or "Commission") actions that were initiated from October 20, 1997 through March 13, 1998. The docket summaries are organized numerically according to the FCC bureau responsible for the matter. The docket summaries provide brief synopses and citations to the full text of the FCC action, but are not intended to serve for the text contained in the original sources.

CABLE SERVICES

FCC DOCKET No. 98-20; CS DOCKET No. 97-151: *In re* Implementation of Section 703(E) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachment, *Report and Order*, February 6, 1998.

Pursuant to Section 703 of the Telecommunications Act of 1996, this Report and Order implements the rules necessary to implement the regulation relating to pole attachments. The Commission adopts the standard that all rates for pole attachments be "just, reasonable, and non-discriminatory." The Commission further provides that the regulations promulgated will apply "when the parties fail to resolve a dispute over such charges."

The Commission's role is limited to circumstances when the parties fail to resolve a dispute through good faith negotiation. In the event that the parties are unable to agree upon a mutually acceptable rate, the Commission will step in and arbitrate the disagreement. No specific set time limit is adopted for how long the parties must negotiate before the FCC will become involved. The only criteria is that the parties must first attempt to negotiate their differences in "good faith."

The adoption of this rule enumerates the policy set forth by the FCC that a utility should not charge different pole attachment rates based upon the type of service provided by the attaching entity. The Commission reiterates that cellular telephone, mobile radio, and PCS are telecommunications services, and as a result are covered equally by this rule. In other words, wireless carriers should be charged the same amount as

charged to cable carriers for the same amount that is charged to cable carriers for the same amount of space rented on a pole.

CS DOCKET No. 97-55: *In re* Commission Seeks Comment On Revised Industry Proposal for Rating Video Programming, *Public Notice*, September 9, 1997.

Section 551 of the Telecommunications Act of 1996 ("1996 Act") requires the Commission to determine whether, within one year after enactment, video programming distributors have established voluntary rules for rating programming containing sexual, violent, or other indecent material. The Commission must further determine whether this rating system is acceptable and whether program distributors have voluntarily agreed to distribute such programming. If the Commission rejects the industry rules for rating programming, then it can appoint an advisory committee to develop procedures for rating programming.

On January 17, 1997, the Presidents of National Association of Broadcasters, National Cable Television Association, and the Motion Picture Association of America submitted a joint proposal to the Commission describing a voluntary system of parental guidelines for rating television programming. Under the proposed guidelines, all television programming, with the exception of news and sports, was to receive a rating from one of six age-based categories. Two categories were designed specifically for children while the other four categories were designed for the entire audience. Ratings were to be assigned to programs by broadcast and cable networks and to appear for fifteen seconds at the beginning of each program in the upper left-hand corner of the screen.

In response to the industry proposal, the Commission issued a Public Notice on February 7, 1997. The Public Notice set forth the proposed television guidelines and sought comments on whether the proposal met the standards set forth in Section 551(e) of the 1996 Act. The Commission received numerous comments from public interest groups expressing dissatisfaction with the industry proposal's age-based guidelines and indi-

cated the need for more specific, content-based guidelines.

On August 1, 1997, the Presidents of National Association of Broadcasters, National Cable Television Association, and Motion Picture Association of America notified the Commission that certain elements had been added to the system of parental guidelines submitted on January 17, 1997. The revised industry proposal changed some of the descriptors associated with the age-based categories and added symbols that indicating the type of material included in a particular program. Under the revised proposal, programming would continue to fall into one of six categories, however, symbols would be added to indicating the particular content of each program. These symbols include: (V) for moderate violence, (S) for some sexual situations, (L) infrequent coarse language, and (D) for some suggestive dialogue.

On September 9, 1997, the Commission issued another Public Notice seeking comments on whether the revised industry proposal meet the standards set forth in Section 551(e) of the 1996 Act. Specifically, the Commission sought comments on: (1) whether the industry had established voluntary rules for rating video programming that contains sexual, violent, or other indecent materials parents should be informed of before it is displayed to children; (2) whether such voluntary rules that are "acceptable"; (3) whether video programming distributors have voluntarily agreed to broadcast signals containing such ratings; (4) whether the revised industry proposal satisfies Congress' concerns in enacting the statute; and (5) whether the Commission should determine the acceptability of any alternative ratings systems.

COMMON CARRIER

FCC DOCKET No. 97-403; CC DOCKET No. 97-149: *In re* 1997 Annual Access Tariff Filings, *Memorandum Opinion and Order*, Dec. 1, 1997.

The FCC, in concluding an investigation of Local Exchange Carriers' ("LECs") 1997 Annual Tariff Filings, found certain LECs' annual access rates to be higher than justified and therefore unreasonable and unlawful, under Section 201(b) of the Communications Act of 1934, as amended. This action became necessary based upon review

of the LECs' submission of data in support of the 1997 filings, which the Commission found to be based upon underestimated per-line base factor portion ("BFP") revenue requirements. Projected BFP revenue requirements directly affect the calculation and establishment of the following year's end user line charge. By consistently reflecting a downward bias in BFPs, the LECs US WEST, Southwestern Bell, Bell Atlantic, NYNEX, Sprint and GTE were able to earn more common line revenues than FCC price cap rules would otherwise allow for under correctly calculated BFPs. The Commission prescribed a method in which the BFP could be more accurately calculated. Furthermore, Bell Operating Companies, SNET, Frontier, GTE and Rochester were found to have unreasonably calculated exogenous cost decreases; GTE, Pacific Bell, and US WEST improperly calculated exogenous cost adjustments for Other Billing and Collection services; and Concord, Chillicothe, Roseville and PRTC had calculated their rate bases on over-estimated cash working capitol amounts. The *Memorandum and Order* provided for the revision and refiling of tariffs and the issuance of refunds.

FCC DOCKET No. 98-9; CC DOCKET No. 92-77: *In re* Billed Party Preference For Interlata 0+ Calls, *Second Report and Order and Order on Reconsideration*, January 29, 1998.

In this Report, the Commission, pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA or Section 226 of the Communications Act), addressed the problem of widespread consumer dissatisfaction concerning the high charges imposed by many operator services providers or ("OSPs") for calls made from public phones and other aggregator locations such as payphones, hotels and hospitals. It has been found that calls made from a consumer's regular home or business location are less costly than calls made from an aggregator location.

The goal of TOCSIA was for the Commission to promulgate regulations to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls. Nevertheless, more than five years after enactment of the TOCSIA, the high rates of many OSPs and surcharges imposed by

aggregators continue to be a concern. At this time, the Commission is examining what additional steps can and should be taken to foster greater competition by OSPs. Under TOCSIA, OSPs are required to file and maintain tariffs informing consumers not only of their interstate charges, but also any applicable price-imposed fee ("PIF") or aggregator surcharge collected by the OSP.

Under the rules adopted in this Report, before a 0+ interstate, domestic, interexchange call from an aggregator location may be connected by an OSP, the OSP must orally advise the caller how to proceed in order to receive a rate quote, such as by pressing the # key or some key or keys, but no more than two, or by simply staying on the line. This message must precede any further oral information advising the caller what to do to complete the call, such as to enter the caller's calling card number.

The Commission concludes that the rules adopted herein will serve to place downward pressure on prices charged in excess of competitive rates, and could save consumers part, if not all, of the previously estimated quarter of a billion dollars per year.

Several commenters, including Sprint, oppose adoption of a universal prior price disclosure requirement to address the problem of high OSP charges and related PIFs. These commenters maintain that such disclosure requirements will serve to increase cost and delay call competition. However, the Commission provides that OSP's informational tariffs, open entry policies, and current competition in the OSP marketplace have not been sufficient to ensure that the charges for all OSP calls are just and reasonable. Now, these rules will provide transient callers with the information necessary to maximize their awareness of their options and to make informed decisions with respect to payphone calls. These rules then, are not only pro-consumer but also pro-competitive based on options available to the informed consumer.

CC DOCKET No. 92-237: *In re Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking*, Oct. 22, 1997.

The Commission modified a previous decision

to expand Carrier Identification Codes (CICs, the numeric prefixes dialed by a long-distance telephone call originator to choose a particular interexchange carriers ["IXCs"] through presubscription) from three to four digits and to similarly expand the Carrier Access Code (CACs, the additional prefix to the CIC—plus the CIC itself—dialed by long-distance originators without presubscription) from five to seven digits. The FCC created a "two-step" end to the transition during which three and four digit CICs will co-exist. Local Exchange Carriers ("LECs") providing equal access must complete switch changes to recognize four-digit CICs by January 1, 1998, and IXCs must prepare their networks for and educate customers about the expanded codes by June 30, 1998.

The FCC denied VarTec's Application for Review and affirmed the Commission's previous refusal to grandfather use of three-digit CICs and five-digit CACs. The Commission found that grandfathering could produce significant anticompetitive effects counter to the public interest. LECs must offer an "intercept message" to customers dialing the expired code. The message must announce that "a dialing pattern change has occurred" and that the caller's IXC must be contacted for further information.

Finally, the Commission adopted a Second Further Notice of Proposed Rulemaking (Second FNPRM) tentatively concluding that LECs requiring upgrades must convert their switches to provide equal access and to accept four-digit CICs when replacing switching facilities, regardless of whether the LEC has received a customer request to do so, and that all LECs must complete such conversions within three years of the effective date of the anticipated FCC Order. The Commission requests Comments regarding these tentative conclusions.

CC DOCKET No. 96-83: *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order*, December 16, 1997.

On October 9, 1997, the Commission adopted an Order on Remand that established a new default rate for per-call compensation for subscriber 800 and access code calls originated from payphones. In the Order, the Commission implemented Section 276 of the Communications Act,

by requiring that "all payphone service providers are fairly compensated for 'each and ever' payphone call." In order to receive compensation from IXC's for subscriber 800 and access code calls, payphone service providers were then required to provide pay-phone specific coding digits with calls originating from their payphones.

As part of the Order, the Common Carrier Bureau ("Bureau") granted an extended transition period to those who could not provide "pay-phone specific digits" with requests for per-call compensation. However, the waiver was limited in that only those LECs and PSPs who were incapable of transmitting the coding digits were afforded the five month extension. Those LECs and PSPs who had the ability to transmit the codes were obligated to do so without delay.

Personal Communications Industry Association ("PCIA") asked the Commission to stay the order until March 9, 1998 (the expiration of a waiver granted by the Bureau to LECs and PSPs that could not meet requirements immediately), or until two conditions were met. Those conditions are: (1) when local exchange carriers ("LEC's") provide unique payphone coding digits that enable call blocking; and (2) when interexchange carriers ("IXC's") demonstrate that they can provide call blocking at a reasonable price for substantially all access costs and subscriber 800 payphone calls. PCIA sought to protect both payphone service providers and end users from compensation obligations and increased rates or charges. PCIA claimed that the harm resulting from the default rate would be irreparable.

The Commission denied the stay, explaining that: (1) based upon past precedence, the Order (setting the default rate) would likely be affirmed on review; (2) that PCIA showed insufficient evidence that the Order would cause irreparable harm to its members; and (3) that a stay would, in fact, cause injury to interested parties and the public in general.

The Commission explained that when determining whether to stay an Order, the Commission considers four factors: (1) whether it is likely that the petitioner will prevail on the merits of its petition for review; (2) whether the petitioner will suffer irreparable harm in the absence of a stay; (3) whether the stay will not injure other parties; and (4) whether the stay would be in the public interest.

With respect to the merits of PCIA's challenge to the Order, PCIA argued that the Commission should have allowed a market-based standard on the ground that carriers could block calls, rather than imposing a pre-set default. The Commission explained, however, that imperfections in the marketplace had led to the establishment of the default rates.

GENERAL COUNSEL

REPORT NO. GN 98-1: FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review, February 5, 1998.

The Commission staff has released a list of 31 proposed proceedings to be initiated as part of the 1998 biennial regulatory review. The review is aimed at eliminating or modifying regulations that are overly burdensome or no longer serve the public interest.

This list is the result of a comprehensive internal review consisting of informal industry input as well as public input. The list includes a review of all broadcast ownership rules not already subject to a pending proceeding and many common carrier rules.

The purpose of this proposal is to streamline and deregulate the current system of rules in accordance with the mandate of Section 11 of the Telecommunications Act of 1996, as amended. The Telecommunications Act requires biennial review of broadcast ownership rules.

The list proposed is a working document intended not to be a complete and rigid list, but will be flexible regarding continued input from the public and industry. The FCC has established several means over the Internet to contact them regarding possible feedback and input on the list. Via e-mail, the FCC may be reached at biennial@fcc.gov; or wtbforum@fcc.gov; or through the Biennial Review Home Page at <http://www.fcc.gov>.

INTERNATIONAL

FCC DOCKET NO. 97-399; CC DOCKET NO. 93-23; IB DOCKET NO. 96-111: *In re* Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section

25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations, *Report and Order*, Nov. 26, 1997.

The World Trade Organization ("WTO") Agreement on Basic Telecommunications Services ("Agreement") brings competition to global markets for telecommunications services, including satellite services. The desired result from the market-opening measures of the Agreement is a more competitive global market for all basic telecommunications services. This Report and Order implements the U.S. Government's commitments in furtherance of the Agreement to provide access to the U.S. market for foreign-licensed satellite services by establishing a framework for reviewing applications of such satellite systems to serve the United States. The Commission wishes to encourage foreign-licensed satellite entry into the United States to promote the public interest through competition and technological growth as contemplated by both the Agreement and the Communications Act of 1934.

The framework adopted in the Report and Order assesses the benefit to the public interest, convenience, and necessity to determine whether non-U.S. licensed satellites will be granted access to the United States. Applications by non-U.S. satellites licensed by a WTO Member will enjoy an open entry standard because the Commission will presume that competition will be promoted by that foreign entry into the United States. For non-U.S. applicants which are licensed by non-WTO countries, the Commission will evaluate the effective competitive opportunities ("ECO") in the country in which the foreign satellite was licensed, a process known as the "ECO-Sat test" to determine whether access will be granted. Additional factors to be assessed in reviewing all applications are spectrum availability, eligibility requirements and operating requirements, national security, law enforcement, foreign policy, and trade considerations.

FCC DOCKET No. 98-26, IB DOCKET No. 98-21: *In re* Policies and Rules for the Direct Broadcast Satellite Service, *Notice of Proposed Rulemaking*, Feb. 26, 1998.

With this NPRM, the Commission commenced an effort to unify and simplify the Commission's rules governing the direct broadcast satellite

("DBS") service. Currently, DBS rules are codified in Part 100, while the rules for direct-to-home fixed-satellite service ("DTH-FSS") are codified in Part 25. DBS and DTH-FSS serve more subscribers than any type of multi-channel video programming distribution other than cable, currently about 8.5 million. This NPRM proposed to consolidate, where possible, the DBS service rules with the rules for DTH-FSS and other satellite services under Part 25 and to eliminate Part 100 entirely. It also proposed to move certain DBS-specific Part 100 rules into Part 25 and to eliminate several Part 100 rules which the Commission believes are no longer needed. This is proposed because the Commission sees the current regulatory scheme as being unnecessary and duplicative.

This NPRM also sought comment on its proposal that the Commission move existing DBS foreign ownership rules from Part 100 to Part 25, and asked whether the Commission should modify these rules. It also sought comment on how the Commission could strengthen rules regarding the provision of DBS service to Alaska and Hawaii and whether they should adopt geographic service rules for Puerto Rico and other U.S. territories and possessions.

MASS MEDIA

FCC DOCKET No. 97-397; GC DOCKET No. 92-52; MM DOCKET No. 97-234: *In re* Implementation of Section 309(j) of the Communications Act: Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Reexamination of the Policy Statement on Comparative Hearings; Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, *Notice of Proposed Rulemaking*, Nov. 26, 1997.

The Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 ("Balanced Budget Act"), expanded section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j), to grant the Commission with the authority to decide mutually exclusive applications for initial broadcast licenses for new television and radio stations by a competitive bidding process. The Balanced Budget Act also repealed the authority of the Commission under section 309(i) to decide mutually exclusive applications for initial broadcast licenses for new television and radio stations by a lottery system.

Previously, under section 309(i), the Commission could only decide mutually exclusive applications for new television and radio stations by comparative hearings or lottery. In this *Notice of Proposed Rulemaking*, the Commission is proposing general competitive bidding procedures for all actionable broadcast services within the scope of amended section 309(j) except for certain digital television services. The proposed rules implement the section 309(j) requirement that the Commission must resolve all mutually exclusive applications for initial licenses for broadcast stations filed after July 1, 1997 by competitive bidding. The Commission also proposes to decide applications filed before July 1, 1997 by competitive bidding. The Commission does, however, seek comment on whether all or some of the cases file before July 1, 1997 should be decided by comparative hearings instead.

In addition, the Commission seeks comment on (1) whether the Commission is required to use competitive bidding to resolve disputes for mutually exclusive applications to provide Instructional Television Fixed Service ("ITFS"); and (2) whether the Commission should use competitive bidding to resolve disputes in pending comparative broadcast renewal proceedings.

FCC DOCKET NO. 98-23; MM DOCKET NO. 87-268: *In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, Feb. 23, 1998.

In the *Fifth Report and Order* in the digital television ("DTV") proceeding the commission adopted rules to implement the conversion to digital television. In the *Reconsideration of the Fifth Report and Order* the Commission reaffirmed its previous findings.

The Commission granted Coast TV and Three Feathers Communications' Petition for inclusion into the list of eligible permittees for a DTV license. Coast TV and Three Feathers Communications had fulfilled the requirements but were inadvertently excluded from the list of eligible permittee in Appendix E of the *Fifth Report and Order*.

The Commission also addressed the pending NTSC applicants who were not eligible for an initial DTV paired license. The NTSC applicants will

not be granted a second channel to convert to DTV but may convert on their single 6 MHz channel. The Commission found that allowing NTSC applicants to participate in the conversion to DTV is in the public interest. The applicants are required to comply with the two year construction period to prevent the stockpiling of spectrum.

WIRELESS

FCC DOCKET NO. 98-18; REPORT NO. WT 98-2: *Forbearance From Pro Forma Transfer and Assignment Procedures for Wireless Telecommunications Carriers, Memorandum Opinion and Order*, February 5, 1998.

The Commission adopted procedures that would streamline the process of granting forbearance from its pro forma transfer and assignment procedures for wireless telecommunications services. Pursuant to Section 310(d) of the Telecommunications Act of 1996 ("1996 Act"), wireless telecommunications carriers must file applications for pro forma assignments or transfers in advance of the desired transaction and wait for Commission processing and grant of such applications. Additionally, a separate form and filing fee was required for each affected license. Under this Memorandum Opinion and Order, wireless telecommunications carriers no longer must seek prior Commission approval before a pro forma transaction. Instead, they may now notify the Commission after the transaction has been consummated to update Commission records. Additionally, licensees may elect to file a single letter to notify the Commission, rather than file separate forms for each affected license.

Forbearance will be applied to telecommunications carriers licensed under Part 21, Part 22, Part 24, Part 27, Part 90, and Part 101 of the FCC rules. However, this forbearance will not extend to carriers licensed under these rules which do not meet the statutory definition of "telecommunications carrier," such as public safety, and private point-to-point microwave licensees.

FCC DOCKET NO. 92-297; REPORT NO. WT 98-1: *In re Auction and Licensing of Local Multipoint Distribution Service, Third Order on Reconsideration*, Feb. 3, 1998.

The Commission affirmed provisions of the Local Multipoint Distribution Service ("LMDS")

rules and, in effect, allowed for its auctioning and licensing. LMDS is a fixed, broadband point-to-multipoint wireless service for data, video, one and two-way voice with larger capacity than is currently available. The Commission's order rejected requests to modify the LMDS restrictions on incumbent cable systems and local exchange carriers ("LECs"). Those restrictions prohibit incumbent LECs and incumbent cable companies from holding attributable interests in an in-region LMDS licensee. Those incumbent LECs and cable operators were allowed to participate in the LMDS auctions (scheduled to begin on February 18, 1998), but must have divested conflicting holdings after the auction. In its Order, the Commission affirmed that 20 percent ownership level was the correct threshold at which to trigger the restrictions. The FCC also upheld the band-use plan for the spectrum at 31.0-31.3 GHz that designates the entire 300 megahertz for LMDS and terminates licensing under the previous point-to-point 31 GHz service rules. The flexible construction rule was also upheld in the Order, requiring that the licensee must provide "substantial service" during the 10-year license period. The Commission also denied petitions to further reconsider its denial of applications for waiver for certain point-to-point microwave rules (at 28 GHz) which existed before the adoption of LMDS.

CC DOCKET No. 94-102; WT DOCKET No. 97-43: FCC Requires Wireless Carriers to Forward All 911 Calls, *Memorandum Opinion and Order*, December 1, 1997.

With the release of the Memorandum Opinion and Order, the Commission reaffirmed its commitment to advance the public safety goals established in the Communications Act of 1934. The Commission modified its wireless 911 rules to es-

tablish a procedure in which wireless carriers must transmit all 911 calls from both subscribers or nonsubscribers to emergency assistance providers or Public Safety Answering Points ("PSAPs"). The Commission's objective is to assure that all wireless telephone users will have prompt access to 911 emergency services without cumbersome subscriber validation procedures intended to identify and intercept calls from non-subscribers.

The Commission temporarily suspended enforcement requiring wireless carriers to transmit 911 Text Telephone ("TTY") calls made on a digital system until October 1, 1998. The Commission delayed the implementation to allow the industry along with organizations representing individuals with hearing and speech disabilities, to overcome the technical barriers and compatibility problems. The Commission will require the industry associations to inform them of the progress in making the digital wireless phone and TTY devices compatible. Additionally, the Commission requires carriers to make every reasonable effort to notify subscribers of the incompatibility.

The Commission modified its definition of "covered Specialized Mobile Radio ("SMR") carrier" for 911 purposes. It includes only providers of real-time, two-way interconnected voice service, the networks of which utilize intelligent switching capability and offer seamless hand-off to customers, and to extend this definition to broadband Personal Communication Services and cellular as well as SMR providers.

The Commission upheld its decision to require carriers to be able to provide automatic number identification and cell site information for 911 calls to PSAP as of April 1, 1998. The Commission will require carriers to identify the location of mobile units making 911 calls within a radius of no more than 125 meters effective October 1, 2001.

